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14 CAMBRIDGE CENTER
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OFFICE OF PETITIONS

In re Application of :
Gotwals et al. :
Application No. 09/423,018 : DECISION ON PETITION
Filed: 12 October, 2000 :
Attorney Docket No. A018 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 11 July, 2006, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned on 31 March, 2005, for failure to file a proper reply to the non-final Office action mailed on 30 December, 2004, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 29 July, 2005.

Petitioner requests that the application be revived for copendency with divisional Application No. 11/108,597 filed on 18 April, 2005.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and


(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

11/108,597, filed on 18 April, 2005. Since this application is revived for purposes of continuity only with divisional Application No. 11/108,597, filed on 18 April, 2005, and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the above-referenced application.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The one-month extension request filed on 11 July, 2006, was submitted more than five (5) months after the end of the period for reply to the Office communication mailed on 30 December, 2004, and therefore is unnecessary. The extension of time fee paid on 11 July, 2006, will be credited to counsel's deposit account, as authorized.

The address in the petition is different than the correspondence address. A copy of this decision will be mailed to the address listed in the petition. All future correspondence will be mailed solely to the address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.


Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Coleman, Sudol & Sapone, P.C.
714 Colorado Avenue
Bridgeport CT 06605-1601

² See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).